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JAMES D. MAHER,
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IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1920.

No. 257.

THE STATE OF WYOMING ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

**SUPPLEMENTAL BRIEF ON BEHALF OF THE
APPELLANTS.**

WILLIAM L. WALLS, *Attorney General of the State of
Wyoming, Solicitor and of
Counsel for Appellants.*

D. A. PRESTON, ✓
H. S. RIDGELY, ✓
HERBERT V. LACEY,
JOHN W. LACEY, ✓
Of Counsel.

(27,497)

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The appellants, under the permission given by the court at the hearing, file this supplemental brief on the question of the jurisdiction of the court.

As stated by the Assistant Attorney General on behalf of the Government, the answer in the cause shows a situation under which the matter of accounting is, in fact, nothing more than a name. The separate answer of the State of Wyoming, for example, on printed pages 26 and 27 of the record, discloses that the funds produced from the lands in controversy were not being taken or appropriated by the defendants, but, on the contrary, were deposited, as made, with

the Stockgrowers National Bank of Cheyenne, "to await the outcome of the determination of the title to the land, the money thus accruing to follow the title to the land."

This matter has since been put in a form agreed to by all parties here, by a stipulation in writing setting forth the facts. A copy of this stipulation is attached to this brief as an appendix. The original is filed with the clerk of this court.

From this stipulation it will be found that the answer is exactly true, and, further, that all the issues, proceeds, and profits, as arising, "have been and are continually deposited with the Stockgrowers National Bank of Cheyenne, of Cheyenne, Wyoming, as holder of such issues, proceeds, and profits, agreed upon and approved by all the parties, and that, under said agreement, all said issues, proceeds, and profits so deposited with said bank are, upon the final decision of this cause, to become the property of said appellee, in case such final decision shall directly or in effect declare the appellee entitled to hold the lands in controversy, and shall become the property of the appellants in case such final decision shall directly or in effect declare the appellants entitled to hold said lands as against the appellee."

The stipulation further in terms agrees, as a matter of fact, that "the final determination of the question to the right to the lands in controversy has at all times been and is, in fact, the full and final determination of every issue in the cause."

The stipulation further agrees, as a matter of fact, "that by said continual depositing of such issues, proceeds, and profits full accounting thereof and therefor has been and is being made as such issues, proceeds, and profits are produced, and no other or further accounting is, has been, or will be necessary."

Without discussing what would have been the situation in the absence of the statement made by the Assistant Attorney General and acquiesced in by the appellants at the hearing, as to the deposit of the funds, and without discussing the situation as it would have been had the stipulation above

mentioned not been made by the parties in this cause, as a stipulation of facts, it seems to us now entirely clear that there is no undetermined issue of fact. As the decree of the Circuit Court of Appeals now stands, the determination of the title to the land settles and determines every issue. The accounting is even less than ministerial. It is a mere turning over of the funds accumulated by the custodian agreed upon and approved by all the parties and with specific instructions to turn over such proceeds to the person or persons entitled, as above indicated.

There is no semblance, as it seems to us, to those cases where attempts have been made to bring appeals or writs of error to this court in fragments. The judgment as it stands seems to us not only final but complete, requiring no further judicial determination for its complete carrying into effect.

The case of Thomson against Dean, 7th Wall., 342, seems to us to settle the principle here involved. In that case the controversy related to the ownership and transfer of stock. "The decree directed that Dean, the defendant below and appellant here, transfer forthwith upon the books of the company one hundred and ninety-four shares of the stock to one of the plaintiffs below, who are appellees here, and ten shares to another. It directed further that an account be taken and stated as to the amount paid and to be paid for the stock and as to dividends accrued and to be credited under the contracts between the parties."

In passing upon the question of its jurisdiction this court used the following language:

"In this case the decree directs the performance of a specific act and requires that it be done forthwith. The effect of the act when done is to invest the transferees with all the rights of ownership. It changes the property in the stock as absolutely and as completely as could be done by execution on a decree for sale. It looks to no future modification or change of the decree. * * * We think that the current of decisions fully sustains the rule laid down by Chief

Justice Tancy in the case of *Forgay vs. Conrad*, and which we again declare in his own language:

"When the decree decides the right to the property in contest and directs it to be delivered up by the defendant to the complainant, or directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one to that extent, and authorizes an appeal to this court, although so much of the bill is retained in the circuit court as is necessary for the purpose of adjusting by further decree the accounts between the parties pursuant to the decree passed."

See also *First National Bank vs. Shedd*, 121 United States, 74.

Winthrop Iron Co. vs. Meeker, 109 U. S., 180.

Lewisburg Bank vs. Sheffey, 140 U. S., 445.

McGourkey vs. Toledo, etc., Railway, 146 U. S., 536.

Carondelet Canal & Navigation Co. vs. Louisiana, 233 U. S., 362.

Charles Glen Collins, appellant, vs. Frank M. Miller, United States Marshal, decided by this court March 29, 1920.

We submit that the court here has jurisdiction of the appeal on the ground that the decree here, under the facts as brought into the record by the stipulation, if not theretofore in the record, is final and complete.

WILLIAM L. WALLS,

*Attorney General of the State of Wyoming
and of Counsel for Appellants.*

D. A. PRESTON,
H. S. RIDGELY,
HERBERT V. LACEY,
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Of Counsel.

APPENDIX.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1920.

No. 257.

THE STATE OF WYOMING ET AL., *Appellants*,

vs.

THE UNITED STATES OF AMERICA, *Appellee*.

Stipulation.

It is hereby stipulated and agreed by and between all the parties that, under an agreement between the parties made and entered into as soon as oil was discovered on the lands in controversy, all the issues, proceeds, and profits from said land, less an amount not in excess of the actual costs of operation, which amount has been exactly stipulated and agreed upon by the parties, have been and are continually deposited with the Stockgrowers National Bank of Cheyenne, of Cheyenne, Wyoming, as holder of such issues, proceeds, and profits, agreed upon and approved by all the parties, and that under said agreement all said issues, proceeds, and profits so deposited with said bank are, upon the final decision of this cause, to become the property of said appellee in case such final decision shall directly or in effect declare the appellee entitled to hold the lands in controversy, and shall become the property of the appellants in case such final decision shall directly or in effect declare the appellants entitled to hold said lands as against the appellee.

It is further stipulated and agreed that said issues, proceeds, and profits are now in the hands of said bank ready to

be turned over to the party or parties entitled thereto under said agreement, and that by said continual deposits of such issues, proceeds, and profits full accounting thereof and therefor has been and is being made as such issues, proceeds, and profits are produced, and no other or further accounting is, has been, or will be necessary, and that the final determination of the question of the right to the lands in controversy has at all times been and is, in fact, the full and final determination of every issue in the cause.

(Signed)

FRANK K. NEBEKER,

Assistant Attorney General.

WILLIAM L. WALLS,

Attorney General of the State of Wyoming

and of Counsel for Appellants.

(Signed)

D. A. PRESTON,

H. S. RIDGELY,

HERBERT V. LACEY,

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